

ARKANSAS SUPREME COURT

No. CR 07-1319

JOHNNY HOOD
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered February 7, 2008

PRO SE MOTION FOR BELATED
APPEAL OF ORDER [CIRCUIT
COURT OF SALINE COUNTY, CR
2001-455, CR 2002-740, CR 2003-105,
CR 2003-109, CR 2003-110, CR 2003-
164, HON. GRISHAM PHILLIPS,
JUDGE]

MOTION DENIED.

PER CURIAM

On June 11, 2003, judgment was entered reflecting that petitioner Johnny Hood had entered a plea of guilty to multiple criminal offenses and was sentenced to an aggregate term of 540 months' imprisonment. Almost four years later on February 12, 2007, petitioner filed in the trial court a pro se motion seeking to correct the commitment order. He alleged that the judgment entered did not accurately reflect the plea bargain he had made with prosecutors, that the sentencing judge did not comply with procedural rules when accepting the plea, and that the Arkansas Department of Correction had incorrectly calculated the time he would be required to serve before becoming eligible for parole.

On February 23, 2007, the trial court entered an order denying the motion on the grounds that it amounted to an untimely request for relief pursuant to Criminal Procedure Rule 37.1. Petitioner did not timely file a notice of appeal with the circuit clerk within thirty days of the date the order was entered as required by Ark. R. App. P.--Civ. 4(a). He now seeks leave from this court to proceed

with a belated appeal pursuant to Ark. R. App. P.–Crim. 2(e).

A petitioner has the right to appeal a ruling on any petition for postconviction relief. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). With that right goes the responsibility to file a timely notice of appeal within thirty days of the date the order was entered. If the petitioner fails to file a timely notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure, regardless of the merit of the pleading denied by the court. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam).

As grounds for the motion, petitioner asserts that the trial court erred in declaring the motion untimely and that he was not promptly provided a copy of the order so that he could file a timely notice of appeal. We recognize that Rule 37.3(d) provides that the circuit clerk must promptly provide the petitioner with a copy of the court's order when it is entered. *Chiasson v. State*, 304 Ark. 110, 798 S.W.2d 927 (1990) (per curiam); *Porter v. State*, 287 Ark. 359, 698 S.W.2d 801 (1985) (per curiam). Nevertheless, while there is no notation on the order indicating when a copy of it was mailed to the petitioner, we need not consider whether petitioner was promptly provided a copy of the order because it is clear that the trial court did not err in declaring that the motion was not timely filed. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (per curiam); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam).

While a court may correct a mere clerical error in a judgment and commitment at any time,

a motion to correct based on a substantive claim that a sentence imposed did not conform to the agreement that the petitioner reached when he or she entered a plea of guilty falls within the purview of Criminal Procedure Rule 37.1. Accordingly, the motion filed by petitioner was subject to the limitations in the rule on the timely filing of a petition. Rule 37.2(c) provides that when a plea of guilty is entered, all grounds for postconviction relief must be raised in a petition under the rule within ninety days of the date that the judgment was entered following the plea.

The petitioner here filed the motion challenging the judgment and commitment nearly four years after the judgment and commitment was entered in his cases. The time limitations imposed in Rule 37.3(c) are jurisdictional in nature, and a circuit court may not grant relief on an untimely postconviction petition. *See Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

With respect to petitioner's claim that the Arkansas Department of Correction had made some error in calculating the amount of time he was required to serve before being eligible for early release, petitioner's remedy was not a motion filed in the trial court. The trial court had no jurisdiction to direct the Department to recalculate a parole eligibility date.

Motion denied.